

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Order establishing a self-managed energy )  
efficiency program ("SMEEP") )

Order entered: 12/28/2009

**I. INTRODUCTION**

In this Order, the Vermont Public Service Board ("Board") establishes a pilot self-managed energy efficiency program ("SMEEP" or "Program") pursuant to 30 V.S.A. § 209(h). The SMEEP allows an eligible customer to be exempt from the energy efficiency charge ("EEC") provided that the customer commits to spending an annual average of no less than \$1 million over a three-year period on energy efficiency investments. The Board is approving the Program that has been proposed by the Vermont Department of Public Service ("Department") with certain modifications, as described below and attached to this Order as Attachment A.

Additionally, in this Order, the Board approves the application of International Business Machines, Inc. ("IBM") to participate in the SMEEP.

**II. BACKGROUND**

In 2009, the Vermont General Assembly passed the Vermont Energy Act of 2009,<sup>1</sup> which required the Department to recommend to the Board a "three-year pilot project for a class of self-managed energy efficiency programs for transmission and industrial electric ratepayers only." The statute provides significant specificity as to the major components of the program.

On August 31, 2009, the Department filed a proposed design that outlined the elements of the SMEEP, including eligibility criteria, implementation protocols, and other aspects of the

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1. Public Act 45, (2009 Vt. bien. sess.). The requirement to establish a SMEEP is contained in Section 14 of the Act, codified in 30 V.S.A. § 209(h).

program. The Department represents that the proposal was submitted in collaboration with IBM.<sup>2</sup>

On September 17, 2009, the Clerk of the Board issued a memorandum to the Energy Efficiency Utility ("EEU") e-mail service list establishing a schedule for comments and reply comments on the Department's proposal. The memorandum also requested that comments address whether additional Board process would be needed before the SMEEP program is implemented.

Comments were filed by Vermont Energy Investment Corporation ("VEIC"), the City of Burlington Electric Department ("BED") and the Department. Reply comments were filed by VEIC and IBM.

On October 15, 2009, the Department filed a proposed dollar amount for a fee to be paid by applicants to defray the administrative costs of the SMEEP.

On November 13, 2009, Board staff held a workshop to discuss the SMEEP proposal.

On December 1, 2009, IBM filed a request to participate in the SMEEP.

### **III. DEPARTMENT'S PROPOSAL**

Pursuant to statute, the SMEEP is a three-year pilot program open to transmission-class or industrial-class customers that paid an Energy Efficiency Charge ("EEC") of at least \$1.5 million in calendar year 2008. Additionally, an eligible customer must demonstrate that it has a comprehensive energy management program with annual objectives, or demonstrate that it has achieved certification of ISO standard 14001. Finally, an eligible customer must commit to investing a minimum of \$3 million over a three-year program cycle.

Under the Department's proposal, customers that participate in the SMEEP are not eligible to participate in services or initiatives offered by the EEU and the EEU is not involved with the administration of the Program. However, if the three-year pilot program is not

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2. The Department's letter states that "[g]iven the Legislature's directives regarding eligibility, it appears that IBM is the only entity that currently qualifies for the proposed program."

continued, or participation in the program is terminated, customers would be able to reapply to the Customer Credit Program.<sup>3</sup>

The Department proposes that qualifying customers apply to the Board to participate in the program by December 31, 2009, with the effective date of participation in the SMEEP being January 1, 2010. If an applicant is accepted, the customer will no longer be required to pay the EEC for a period of three years, and the Board will notify the participant's electric utility that the charge will no longer apply to the accepted participant. Participant's bills rendered on or after February 1, 2010, through January 31, 2013, will be exempt from the EEC.

The Department's proposal creates three categories of "Qualified Expenses" for which customers will receive credit against the \$3 million commitment: "Market-driven" projects; "retrofit" projects; and "special energy efficiency" studies. In addition, the fee paid by a customer to participate in the SMEEP will also count towards the \$3 million commitment.

Under the Department's proposal, pre-approval is not required for projects implemented under SMEEP, although all completed projects may be subject to verification review by the Department.<sup>4</sup> Additionally, participating customers may request that the Department pre-review a unique project.

The Department's proposal provides that a customer participating in the SMEEP may submit projects to the Independent System Operator of New England for payment in the Forward Capacity Market. Any payments received through the Forward Capacity Market must be invested in electric or fuel efficiency, in addition to the \$3 million commitment.

The Department's proposal calls for the Board to hold a proceeding, prior to the commencement of the 2012 legislative session, to develop a recommendation regarding the future of the SMEEP pilot.

The Department's proposal also contains reporting requirements, documentation and verification standards, a methodology for requesting that certain information be kept confidential,

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3. The Customer Credit Program allows commercial and industrial customers who meet certain criteria to use a set percentage of the funds they pay into the EEC to invest in their own cost-effective energy efficiency projects. Currently, IBM is the only customer participating in this program.

4. At the November 13 workshop, the Department indicated that it intended to review each of the projects completed by customers participating in the SMEEP. Tr. 11/13/09 at 12 (Poor).

a process for resolving disagreements between program participants and the Department, and a standard for termination of a customer's eligibility in the program.

#### **IV. POSITIONS OF INTERESTED PARTIES**

VEIC filed a letter recommending that certain functions carried out by the Department under the proposed program design should be carried out by the EEU Contract Administrator. VEIC further states that the determination of whether a qualified expense is for a "market-driven" or "retrofit" project, or is a "special energy efficiency" study, should be made jointly between the participant and the EEU Contract Administrator, with the Board acting as final arbiter in the event of a disagreement. Finally, VEIC recommends that the Board make clear that the EEU is authorized to submit projects performed by SMEEP participants in the Forward Capacity Market, with the resulting benefits accruing to Vermont ratepayers, if the participant chooses not to participate in the Forward Capacity Market.

BED filed a letter recommending that certain administrative aspects of the SMEEP be performed by the EEU Contract Administrator rather than the Department. Additionally, BED expresses concern that the Department's proposal allows for an unlimited amount of funding for special energy efficiency studies, which could result in a large expenditure of money that is not held to the cost-effectiveness standards applied to the EEU. BED recommends that the Board impose an administrative cap on this area of expenditure.

The Department filed a letter stating that the Program has implications for efficiency claims made by the EEU into the Forward Capacity Market, as savings at a participant's facility were included in bids made on the State's behalf through bids into the Forward Capacity Market.

IBM filed a letter stating that the special energy efficiency studies category of expenditure is "intended to cover site surveys and special studies to determine if a specific proposal had any energy savings worth pursuing." IBM further proposes a limit on expenditures for the special energy efficiency studies category of 10% of the three-year commitment.

VEIC filed reply comments agreeing with BED that there should be a limit on the allowed expenditures for special energy efficiency studies. VEIC further states that the issue of whether the EEU should be allowed to submit to the Forward Capacity Market projects

undertaken by SMEEP participants is a complicated issue, and it is not clear to VEIC "if this would be economically beneficial to the EEU and to ratepayers in every case."

## V. DISCUSSION

The Department's proposal is consistent with the requirements of Section 209(h), and has been developed in conjunction with IBM, the only customer likely to be able to participate in the SMEEP during this three-year pilot period. We find the Department's proposal to be reasonable, and adopt it, with the modifications described below. The approved Program, as modified, is set forth in Attachment A to this Order.

### Limit on Expenditures for Special Energy Efficiency Studies

BED and VEIC expressed concern that the Department's proposal allows unlimited spending on special energy efficiency studies, with these expenditures credited towards the \$3 million commitment over a three-year period. In response to these concerns, IBM proposed that the Board institute a 10% cap on the amount of Qualified Expenses that could be utilized for special energy efficiency studies. No participant expressed concern with IBM's proposal. We find the 10% cap to be reasonable and we include this provision in Attachment A.

### Role of the EEU Contract Administrator

The Department proposes that it, rather than the EEU Contract Administrator, perform certain administrative functions described in the SMEEP proposal. On November 24, 2009, the Board issued an Order in Docket 7466 determining that the role of the EEU Contract Administrator would no longer be required under the EEU Order of Appointment model.<sup>5</sup> Accordingly, rather than assign the Contract Administrator a role in this new program, only to transition shortly to another entity filling that role when the change in the EEU structure takes

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5. In Docket 7466, the Board altered the structural model of the EEU from a contract-based model to an Order of Appointment model as authorized by 30 V.S.A. § 209(d)(5). The new structure retains the essential functions of the existing EEU but changes the relationship of the EEU with the Board and other entities. The Board concluded that moving to a new model will provide additional benefit to Vermont ratepayers.

effect, it is appropriate for the Department to perform the administrative roles described in the SMEEP proposal from the Program's inception.

#### Resolution of Disagreements

Currently, the Department's proposal states: "In the event the participant disputes any DPS determination, the participant may make a complaint to the Public Service Board, who shall seek to resolve the complaint through negotiation. If no such resolution occurs within thirty (30) days, the Board shall make a determination."

While the Board does not want to discourage parties from resolving disputes through negotiations, the Board's quasi-judicial role is not conducive to the Board conducting negotiations. Accordingly, we modify this portion of the Department's proposal to remove the statement that the Board will seek to resolve any complaints through negotiation. Parties are, of course, free to negotiate issues on their own and to retain a mediator if they so desire.

#### Participation of SMEEP Customers in EEU Programs

Pursuant to the Department's proposal, participants enrolled in the SMEEP may not participate in services or initiatives offered by the EEU. However, participants are still able to participate in efficiency programs offered by Vermont Gas Systems, Inc. ("Vermont Gas"), as these programs are not funded by the EEC.<sup>6</sup> In addition, if Vermont Gas customers become eligible for programs funded by Regional Greenhouse Gas Initiative ("RGGI") funds,<sup>7</sup> it is likely that SMEEP participants who are also Vermont Gas customers would be able to participate in such programs.

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6. Tr. 11/13/09 at 35-36 (Poor).

7. Pursuant to Sections 209(d)(8) and 255(d), revenues from the sale of carbon dioxide allowances in the Regional Greenhouse Gas Initiative quarterly auctions are to be used to provide heating and process-fuel efficiency services. Currently, Vermont Gas customers are not able to participate in programs funded through the sale of RGGI allowances.

### Forward Capacity Market

Pursuant to Section 209(h)(4)(L):

A participant in the self-managed program class may submit projects to the independent system operator of New England, including through recognized aggregators, for payments under that operator's forward capacity market program, and shall invest such payments in electric or fuel efficiency.

As the Department notes in its comments, the EEU has already submitted bids that include savings made at an eligible SMEEP participant's facility into the Forward Capacity Market. At the same time, pursuant to statute, any SMEEP participant is allowed to submit savings made at its facility into the Forward Capacity Market. Since the statute does not require a Program participant to submit bids into the Forward Capacity Market, we direct the EEU to submit any such bids if a SMEEP participant does not, provided that such a submission is in the best interests of Vermont ratepayers. We encourage any SMEEP participant to work with the EEU to determine the best method of submitting savings bids into the Forward Capacity Market to ensure that the maximum amount of funding is available for efficiency programs.

### Application Fee

The Department and IBM recommend that the application fee to participate in the SMEEP should be a one-time fee of \$50,000 for participation in the three-year program. The Department states that this amount is roughly equal to the costs of administering the Customer Credit Program, which is analogous to the SMEEP.<sup>8</sup> No participant had any comments on this proposed fee. We find that it is reasonable and adopt it. The \$50,000 will be deposited into the EEU Fund.

### Transition to the Self-Managed Energy Efficiency Program

IBM, the only entity likely to be able to participate in the Program, currently participates in the EEU Customer Credit Program. Under this program, IBM pays 100% of the EEC, but 90% of such money is returned to it to invest directly in energy efficiency programs. Payments made before the SMEEP starts will be returned to IBM after the January 1, 2010, start of the

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8. Tr. 11/13/09 at 7 (Poor).

SMEEP. All participants agree that such payments will not count towards the \$3 million that must be spent under the SMEEP.<sup>9</sup> We find that this is consistent with the intent of the Program.

#### **VI. IBM PARTICIPATION IN THE SMEEP**

On December 1, 2009, IBM submitted an application with the Board to participate in the SMEEP. IBM's application states that: (1) it is a member of the transmission rate class; (2) it paid more than \$1.5 million in energy efficiency charges in 2008; (3) it has an effective energy management program as evidenced by the projects submitted to Efficiency Vermont since the inception of the EEU; (4) IBM's energy efficiency program is certified under the ISO 14001 standard; and (5) IBM is committed to investing a minimum of \$3 million in energy conservation projects at its Vermont facility over the three-year period from 2010 through 2012.

On December 11, 2009, the Department filed a letter supporting IBM's application.

The Board approves IBM's application to participate in the SMEEP.

#### **VII. CONCLUSION**

The Department's proposed SMEEP is consistent with statute, and we adopt the Department's proposal with the minor modifications described above, and reflected in Attachment A.

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9. *See*, tr. 11/13/09 at 30-35.

**VIII. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Department's proposal for a self-managed energy efficiency program, as modified above, is approved.
2. IBM's application to participate in the self-managed energy efficiency program is approved.

Dated at Montpelier, Vermont, this 28th day of December, 2009.

s/ James Volz	)	PUBLIC SERVICE
	)	
	)	
s/ David C. Coen	)	BOARD
	)	
	)	
s/ John D. Burke	)	OF VERMONT

OFFICE OF THE CLERK

FILED: December 28, 2009

ATTEST: s/ Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*